



# TEST ACCOMMODATIONS FOR PERSONS WITH DISABILITIES



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## INTRODUCTION

The State of Colorado is committed to providing equal access to the wide array of employment opportunities in the state-classified system to qualified persons with disabilities. As part of this commitment, the state endeavors to reduce any barriers to equal access for persons with disabilities in the examination process. In addition, the state affirms its obligation under the Americans with Disabilities Act (ADA) to provide reasonable accommodation upon request to the known limitations of qualified candidates with disabilities.

The purpose of this operational guideline is to provide information and guidance to those persons providing testing accommodations to applicants with disabilities. This operational guideline does not address the provision of accommodations on the worksite, testing or application site architectural concerns, or other non-test administration accommodation issues. For information or assistance concerning these issues you should contact your agency's ADA Coordinator. For assistance, agency ADA Coordinators can be found at the following web site: <http://www.dora.state.co.us/stateada>

Title I of the Americans with Disabilities Act requires employers to provide reasonable accommodations to individuals with disabilities in all areas of employment including employment testing. Employers are only required to accommodate known disabilities. It is up to the individual with the disability to inform the employer of the need for accommodation. While employers may request documentation pertaining to the accommodation requested from a job candidate's physician, physical therapist or other health care professional, they may not inquire about the nature of the disability.

## DEFINITIONS AND PROCEDURES

An individual with a disability is defined as a person who:

- 1) has a physical or mental impairment that substantially limits one or more major life activities
- 2) has a record of such an impairment, or
- 3) is regarded as having such an impairment.

Examples of major life activities include walking, seeing, hearing, breathing, learning, performing manual tasks, working and caring for oneself. In many cases, it is not the existence of an impairment or condition that defines a person as having a disability, but the effect of the impairment on a particular individual. To determine if impairment poses a substantial limitation, one must look at the nature and severity of the limitation, how long it is expected to last and its anticipated long-term impact.

Reasonable accommodation is best understood as a process in which any barriers to an individual's equal employment opportunity are removed. The accommodation process focuses on the needs of a particular individual in relation to barriers in performing the duties of a position because of a disability. Reasonable accommodation is a modification that will allow a qualified individual with a disability to successfully compete for and perform effectively in a specific position.

The ADA prohibits discrimination against qualified persons with disabilities who are capable of performing the essential functions of a position with or without reasonable accommodation. An examination process, therefore, must measure the ability to perform the essential functions and must avoid screening out individuals for factors unrelated to performance of the essential functions. In addition, the employer's obligation to provide reasonable accommodation applies to the examination process. Several key steps to ensure equality of opportunity in the examination process are identified here:

- 1) Develop an internal process to address test accommodation requests. This may include:
  - A form to record and track accommodation requests
  - Designation of key staff to respond to accommodation requests
  - Development of a policy to determine when documentation of disability supporting the request is needed and what sort of documentation is acceptable
  - Establishment of a procedure to ensure confidentiality of disability information
  - Development of available resources to effectively comply with accommodation requests.

Agencies have some flexibility in establishing the process that works for them, but an identified process should be in place.

- 2) Train applicable staff on the department's test accommodation process, including disability etiquette. This is especially critical for reception staff who may be in position to accept accommodation requests.
- 3) Establish as part of the examination notification process a method to inform applicants with disabilities of the:
  - Department's obligation to comply with the ADA
  - Applicant's responsibility to request reasonable accommodation in advance of the administration of the exam
  - Process for the applicant to make such a request.

Generally, this can become a standard part of the test notification letter or Internet self-scheduling instructions. The procedure should not create a hardship for the applicant and should give the applicant sufficient time to notify the agency of his/her need.

- 4) Apply the four-step reasonable accommodation process to the situation. This includes:
  - Analyze and determine the objective (e.g. administration of a written objective exam).
  - Consult the individual with the disability to ascertain the specific limitations presented by his/her disability in the completion of the exam.

- In consulting with the individual with the disability, identify potential accommodations and assess the effectiveness of each in achieving the objective.
- Considering the preference of the individual with the disability, select and implement the accommodation which is most suitable to the applicant and the employer and which does not create an undue hardship for the employer.

The employer should consider the applicant's preference of accommodation; however, the accommodation does not have to be the "best" accommodation possible, so long as it sufficiently meets the needs of the individual with a disability.

Two other points should be made about this process. First, sometimes the accommodation is so obvious that this step-by-step process may be unnecessary. Second, on the other extreme, this process may not lead to an agreed-upon accommodation. In this case, the employer needs to seek technical assistance from the department's ADA Coordinator or other agencies that may lend assistance.

Some common examples of reasonable accommodations in the testing process include: sign language interpreters, additional time, isolated test settings, readers, Braille or large print materials, and talking calculators. While some of these accommodations may be perceived as providing an unfair advantage for applicants with disabilities, the true intent is to ensure that applicants with disabilities have equal access to employment opportunities.

The concept of undue hardship is closely related to the concept of reasonable accommodation. A reasonable accommodation is said to create undue hardship for the agency if it creates significant difficulty or expense. Like reasonable accommodation, undue hardship must be determined on a case-by-case basis. Some factors to be considered in determining if an accommodation will create undue hardship are the cost of the accommodation, the employer's size, financial resources and the nature and structure of its operation.

Even if the accommodation is considered undue hardship, the employer may still have to provide it if funds are available from other sources (e.g. state rehabilitation agencies, tax deductions or credits, even the individual with a disability may be able to offset some or all of the cost). When some of the cost is offset, the employer may consider only the unpaid cost in determining undue hardship.

Contact the department ADA Coordinator for assistance with specific application of the test accommodation process for your department. The ADA Coordinator is also the individual who is responsible for directing persons to the resources available to address accommodation requests as well as for conducting investigations of complaints of discrimination based on disability. Each department's ADA Coordinator should be available to respond to staff inquiries concerning disability issues and compliance with the ADA.

## **DOCUMENTATION**

### **Test Notices**

Examination notices should inform applicants of the type of test so that the applicant may request a reasonable accommodation if necessary. For example, the notice should state if the test will require that answers be written in essay format, on a "bubble" answer sheet, or if it is an oral exam. It may be helpful to an applicant to know what skills the test will measure (e.g. math, spelling, filing). It remains the applicant's responsibility to notify the testing agency of the need for an accommodation.

### **Documentation of an Applicant's Disability**

When an applicant notifies an agency that an accommodation for participation in an examination is needed, the human resources specialist/test administrator responsible for the examination should document the following information for record keeping purposes: applicant's name, social security number, phone number, and test code. If the test is being administered for a specific vacancy, the registration number should be noted. If the disability is not obvious, it is the applicant's responsibility to provide upon request written documentation stating the functional limitations of the disability with respect to the test being administered. The applicant may obtain this documentation from a physician, rehabilitation counselor, psychologist or other qualified professional responsible for the assessment of the specific disability. After this paperwork is received and evaluated, the test may be administered with the appropriate accommodation.

### **Documentation of the Testing Process**

It is highly desirable that agency human resource specialists/test administrators record information regarding test accommodations provided. In addition to the candidate's personal information, the date and time of the test and the test code can be recorded. The actual accommodation and its related cost can also be computed and noted. The cost can include the salary of the employee who corresponded with the applicant and administered the test.

### **Documentation of Denial of Accommodations for the Testing Process**

If it is determined that an appropriate accommodation can not be made for the examination, the human resources specialist/test administrator should document such and have supporting evidence for the decision not to provide an accommodation. Documentation may include data from a test expert regarding the effects of the accommodation on the psychometric properties of the test; the lack of equally valid selection devices; and/or undue hardship evidence. Should it appear that an appropriate accommodation will not be provided, it is recommended that the agency ADA Coordinator be consulted and included in the process.

## **REASONABLE ACCOMMODATIONS**

Prior to scheduling any test, you should be aware of the physical structure of the test site. To the best of your ability, tests should be scheduled in accessible locations.

Just what is a reasonable accommodation and what is not a reasonable accommodation varies from case to case and must be negotiated with the candidate. Several factors contribute to the dilemma of reasonability: does the accommodation allow the candidate to demonstrate his or her full ability or potential, does the accommodation over-compensate to the point of being unfair to the other candidates, is it consistent with the accommodation given to other candidates with the same degree of disability, and what will it cost.

One should not assume that the test accommodation would be the same accommodation as

needed on the job. Because undue hardship is primarily a cost issue, it is important to stress that many job accommodations are not necessarily costly. In fact, the Job Accommodation Network (JAN) stated in 1996 that 20% of all job accommodations are made at no cost, 51% cost between \$1 and \$500, and 11% cost between \$501 and \$1000. Thus, 71% of all job accommodations cost less than \$500.

Some types of exams may only require minimal physical adjustments. Examinees who use a wheelchair but have full upper body coordination may only need adequate access to the testing room and a table that is the correct height. Persons with speech difficulties may be tested better by adapting an oral exam to be taken using another mode of communication. Accommodations can range from simple solutions like the examples above to sophisticated software to be used with personal computers and talking calculators.

As a rule, where an applicant with a disability can reasonably be accommodated, but such accommodation might be disruptive to other examinees, the individual should be scheduled and tested separately. This will not only be less disruptive for others, but may be less difficult for the individual.

There are a few other rules of accommodation that have not been addressed. First, accommodation does not extend to personal items that the individual with a disability needs in every aspect of their life (e.g. a wheelchair). Second, when an accommodation is not wanted or needed by the person with the disability, the employer may not require that the individual accept the accommodation.

The best practice when deciding on reasonable accommodations is to follow the four-step reasonable accommodation process outlined earlier. Again, all reasonable accommodations need to be considered on a case-by-case basis and the individual with the disability is the best resource to use when deciding what accommodations would be given. If questions arise, please contact your ADA Coordinator.